APPENDIX 1

TOM, J.P., MAZZARELLI, ROSENBERGER, ELLERIN, RUBIN, *JJ.*

1533-1534

CHRISTOPHER F. SHERIDAN,

Plaintiff-Appellant-Respondent,

James H. Rodgers

—against—

THE TRUSTEES OF COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK,

Defendant-Respondent-Appellant.

Brian K. Bernstein

Order, Supreme Court, New York County (Marilyn Shafer, J.), entered January 19, 2001, which, in an action arising out of defendant Trustees of Columbia University's refusal to forward plaintiff degree holder's college transcript to graduate schools, *inter alia*, granted defendant's motion to dismiss the complaint insofar as addressed to the causes of action for declaratory judgment, breach of contract and intentional infliction of emotional distress, and denied the motion insofar as addressed to the causes of action for fraud and negligent misrepresentation, unanimously modified, on the law, to dismiss the causes of action, fraud and negligent misrepresentation, and to declare that defendant is not in violation of either its charter or New York law by conditioning its forwarding of

plaintiff's transcript to graduate schools upon his payment of outstanding tuition, and otherwise affirmed, without costs. The Clerk is directed to enter judgment accordingly. Appeal from order, same court and Justice, entered October 11, 2001, which, *inter alia*, granted defendant's motion to reargue insofar as addressed to plaintiff's claim for punitive damages under his causes of action for fraud and negligent misrepresentation, and, upon reargument, dismissed such claim, unanimously, without costs, as academic.

We reject plaintiff's argument that as a degree holder he is in a fundamentally different position from the plaintiffs in cases holding that a university has no legal obligation to provide a diploma or transcript to a graduating student or former student with outstanding financial obligations to the university (*see*, *Gray v St. John's Univ.*, __ Misc 2d __, 2001 NY Misc LEXIS 1044 [App Term, 1st Dept];*Martin v Pratt Inst.*, 278 AD2d 390 [2d Dept]; *lv denied* 96 NY2d 715; *Matter of Spas v Wharton*, 106 Misc 2d 180 [Sup Ct, Albany County]). There is no merit to plaintiff's argument that defendant's refusal to forward his transcript to graduate schools effectively revokes his degree in violation of defendant's charter, Education Law § 226(9), and an implied promise by a university to its graduates not to interfere with the privileges and immunities of his or her degree. The challenged policy is clearly "expedient for carrying into effect the designs of [defendant's] institution", as expressly permitted by its charter, and, while the policy may compromise plaintiff's applications to graduate schools, it does not revoke defendant's certification that plaintiff possesses all of the knowledge and skills represented by the degree.

Plaintiff's other causes of action all lack merit. The breach of contract claim, based on an alleged, post-degree agreement under which plaintiff gave defendant a promissory note in

exchange for defendant's promise to release his transcript, does not allege the essential terms of the note or the agreement in nonconclusory language, or plaintiff's performance of his obligations thereunder (*see*, *Matter of Sud v Sud*, 211 AD2d 423, 424). Plaintiff's claim for intentional infliction of emotional distress fails because the challenged policy does not violate defendant's charter or the law, and also because the policy is not so outrageous as to go beyond all possible bounds of decency and be utterly intolerable in a civilized community (*see*, *Wolkstein v Morgenstern*, 275 AD2d 635, 636-637). Plaintiff's fraud claim, based on an allegation that defendant misrepresented to him that it would release his transcript if he obtained a bank loan and used it to reduce his obligation to the university, should have been dismissed because plaintiff could not have been defrauded into doing what he was already legally bound to do, i.e., pay his tuition (*see*, *Megaris Furs v Gimbel Bros.*, 172 AD2d 209, 212). Plaintiff's negligent misrepresentation claim, based on the same alleged misrepresentation, should also have been dismissed, since, at the time of the alleged misrepresentation, the parties were clearly acting at arm's length (*see*, *Kimmel v Schaefer*, 89 NY2d 257, 263). We have considered and rejected plaintiff's other arguments.

M-2439 — Sheridan v. Trustees of Columbia University
Motion seeking leave to strike reply brief granted.

THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: JULY 2, 2002

By /s/ CATHERINE O'HAGAN WOLFE
Catherine O'Hagan Wolfe, CLERK

APPENDIX 2

NEW YORK SUPREME COURT
APPELLATE DIVISION—FIRST DEPARTMENT

M-4096

Index No. 103062/00

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on October 8, 2002.

Present — HON. PETER TOM, *Justice Presiding,*
ANGELA M. MAZZARELLI
ERNST H. ROSENBERGER
BETTY WEINBERG ELLERIN
ISRAEL RUBIN,
Justices.

CHRISTOPHER F. SHERIDAN,

Plaintiff-Appellant-Respondent,

—against—

THE TRUSTEES OF COLUMBIA UNIVERSITY
IN THE CITY OF NEW YORK,

Defendant-Respondent-Appellant.

Plaintiff-appellant-respondent having moved for reargument of or, in the alternative, for leave to appeal to the Court of Appeals from the decision and order of this Court entered on July 2, 2002 (Appeal Nos. 1533-1534),

Now, upon a reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is denied.

ENTER:

By /s/ CATHERINE O'HAGAN WOLFE
Catherine O'Hagan Wolfe, Clerk.

APPENDIX 3

STATE OF NEW YORK
COURT OF APPEALS

1-14 Mo. No. 1251

At a session of the Court of Appeals Hall in the City of albany on the ninth day.of January, 2003.

Present — HON. JUDITH S. KAYE, *Chief Judge, presiding.*

CHRISTOPHER F. SHERIDAN,

Appellant,

v.

THE TRUSTEES OF COLUMBIA UNIVERSITY
IN THE CITY OF NEW YORK,

Respondent.

A motion for leave to appeal to the Court of Appeals in the above cause having heretofore been made upon the part of the appellant herein and papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion be and the same hereby is denied.

Judge Read took no part.

By /s/ STUART M. COHEN
Stuart M. Cohen
Clerk of the Court

APPENDIX 4

SUPREME COURT OF THE STATE OF NEW YORK —
NEW YORK COUNTY

Filed January 1, 2001

Present — HON. MARILYN SHAFER
Justice

PART 36

CHRISTOPHER SHERIDAN,
Plaintiff,

—against—

TRUSTEES OF COLUMBIA UNIVERSITY,
Defendant.

INDEX NO. 103062/00
MOTION DATE _____
MOTION SEQ. NO. 02
MOTION CAL. NO. ___

The following papers, numbered 1 to 4 were read on this motion to DISMISS

	PAPERS NUMBERED
Notice of Motion/Order to Show Cause—Affidavits—Exhibits	1
Cross-Motion—Exhibits	2
Replying Affidavits	3, 4

Cross-Motion: ☑ Yes ☐ No

Upon the foregoing papers, it is ordered that defendant's motion to dismiss the complaint and plaintiff's cross-motion to amend the complaint are partially granted, in accordance with the decision below.

Plaintiff Christopher Sheridan brings this action for declaratory relief on claims of breach of implied contract, fraud, and intentional infliction of emotional distress against defendant Columbia University.

To plead a cause of action for breach of contract, plaintiff must set forth the provisions of the contract upon which the claim is based. (*Atkinson v Mobil Oil Corp*, 205 AD2d 719.) It is undisputed that plaintiff owes unpaid tuition to the defendant. Plaintiff fails to allege the existence of any contract that would entitle plaintiff to release of his transcript prior to paying what he owes to the university. Plaintiff has failed to set forth legally cognizable grounds which would entitle him to receive his transcript while his tuition debt remains unpaid.

The cause of action for intentional infliction of emotional distress must also be dismissed. It is well settled that in order to set forth a claim, plaintiff must allege extreme and outrageous conduct which either intentionally or recklessly caused plaintiff's severe emotional distress. (*Herlihy v. Metropolitan Museum of Art*, 214 AD2d 250; *Howell v. New York Post Co., Inc.*, 81 NY2d 115.) To survive a motion to dismiss, the conduct must be "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." (*Murphy v. American Home Products*, 58 NY2d 293.) While the inability to complete his application to Harvard Business School is certainly unsettling, the facts

alleged by plaintiff in the instant case do not rise to the requisite level for an emotional distress claim.

Regarding plaintiff's cross-motion to amend the complaint, it is granted only to the extent of permitting the causes of action for negligent representation and fraud, as this Court finds that plaintiff has sufficiently stated a cause of action for both in the amended complaint.

Accordingly, the action continues for plaintiff's fraud and negligent representation claims. The remaining causes of action in the complaint and proposed amendment complaint are dismissed.

Counsel are directed to appear in Part 36 for a discovery conference on Friday, 1-26-01 at 9:30 A.M.

[STAMP]
FILED JAN 19 2001
COUNTY CLERK'S OFFICE
NEW YORK

Dated: 1/01/01

By /signature stamped/ MARILYN SHAFER, J.S.C.
J.S.C.

Check one: [ ] FINAL DISPOSITION [X] NON-FINAL DISPOSITION

APPENDIX 5

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: I.A.S. PART 36

Index No. 103062/00

Filed: October 11, 2001

CHRISTOPHER F. SHERIDAN,

Plaintiff,

—against—

THE TRUSTEES OF COLUMBIA UNIVERSITY
IN THE CITY OF NEW YORK,

Defendant.

MARILYN SHAFER, J.:

Defendant the Trustees of Columbia University in the City of New York (the "University") moves: (1) pursuant to CPLR 2221, for leave to renew and reargue this court's decision and order dated January 1, 2001 (the "Prior Order"), and in the event leave is granted, to (a) dismiss the fraud and negligent representation claims that plaintiff was given leave to amend; or alternatively, to (b) dismiss the request for punitive damages asserted in the fraud and negligent misrepresentation claims, and limit the consequential damages to $1,600; and (2) pursuant to CPLR 325, for removal of this case to the Civil Court. Plaintiff Christopher F. Sheridan cross-moves, pursuant to CPLR

2221, for leave to renew and reargue the Prior Order to the extent that it dismisses plaintiff's causes of action for breach of contract, declaratory relief and intentional infliction of emotional distress.

In October 1990, plaintiff graduated from the University's School of General Studies with a Bachelor of Arts in History. Plaintiff alleges that, since receiving his degree, the University has repeatedly refused to release his transcripts to university graduate programs, including the Harvard University Graduate School of Business, in February 2000. He originally commenced this action for breach of contract, fraud and intentional infliction of emotional distress.

In the prior motion, the University moved to dismiss the complaint. Plaintiff cross-moved for leave to amend his complaint to include causes of action for a declaratory judgment and negligent misrepresentation. In the Prior Order, this court granted the University's dismissal motion, only to the extent of dismissing the claims for breach of contract, intentional infliction of emotional distress and a declaratory judgment asserted in the complaint and proposed amended complaint. Plaintiff's cross motion was granted only to the extent of granting leave to amend his claims to assert causes of action for fraud and negligent misrepresentation, finding that plaintiff sufficiently stated these claims in the proposed amended complaint.

The University now moves for leave to renew and reargue this court's Prior Order.

Although the University characterizes its motion as one for reargument and renewal, it does not submit any new evidence or additional facts not previously known to it (*Rubinstein v Goldman*, 225 AD2d 328 [1st Dept], *lv denied* 88 NY2d 815 [1996]). A motion to renew under

CPLR 2221 is intended to draw the court's attention to new or additional facts which, although in existence at the time of the original motion, were unknown to the party seeking renewal and, therefore, not brought to the court's attention (*Foley v Roche*, 68 AD2d 558 [1st Dept 1979]; *see also*, *Dankner v Szurzan and Dorf, Inc.*, 226 AD2d 669 [2d Dept 1996]). Thus, the University's motion is not for renewal.

A motion for leave to reargue, pursuant to CPLR 2221, is addressed to the sound discretion of the court and may be granted only upon a showing that the court overlooked or misapprehended any relevant facts or misapplied any controlling principles of law (*Foley v Roche*, *supra*). The purpose of reargument is not to serve as a vehicle to permit the unsuccessful party to advance arguments different from those tendered on the original application (*id.*; *see also*, *Mariani v Dyer*, 193 AD2d 456 [1st Dept], *lv denied* 82 NY2d 658 [1993]).

The University's arguments for dismissing plaintiff's claims for fraud and negligent misrepresentation are essentially a reiteration of those made in support of its original dismissal motion. Further, the University's belated attempt to proffer different arguments from those previously made in the prior motion is not permitted under reargument (*Foley v Roche*, *supra*; *see also*, *Mariani v Dyer*, *supra*).

The University's alternate request, for leave to reargue a limitation of plaintiff's consequential damages in the fraud and negligent misrepresentation, is also denied. The University simply reiterates the prior arguments it made in opposition to plaintiff's cross motion for leave to amend, which were rejected by this court. The purpose of reargument is not to serve as a vehicle to permit the unsuccessful party to proffer the same arguments previously made in the prior motion (*Foley v Roche*, *supra*). Further, the Univer-

sity does not demonstrate that this court overlooked or misapprehended relevant facts or misapplied relevant law in allowing plaintiff leave to amend its fraud and negligent misrepresentation claims to include consequential damages (*Foley v Roche*, *supra*).

However, although this court properly granted leave to plaintiff to assert claims in fraud and negligent misrepresentation, as asserted in the proposed amended pleading, it should have dismissed the requests for punitive damages asserted therein. " 'Punitive damages are warranted where the conduct of the party being held liable evidences a high degree of moral culpability, or where the conduct is so flagrant as to transcend mere carelessness, or where the conduct constitutes willful or wanton negligence or recklessness' " (*Lee v Health Force, Inc.*, 268 AD2d 564 [2d Dept 2000], *quoting Rey v Park View Nursing Home, Inc.*, 262 AD2d 624, 627 [2d Dept 1999]). Plaintiff's fraud and negligent misrepresentation claims, as asserted in the proposed pleading, are devoid of any factual allegations that would constitute wilful or wanton negligence, or rise to the level of moral culpability necessary to support a request for punitive damages (*see*, *id*).

Therefore, that branch of the University's motion for leave to renew and reargue is granted to the extent of granting reargument, and upon reargument, granting the motion only to the extent of modifying the Prior Order to dismiss the extent for punitive damages contained in the fraud and negligent misrepresentation claims.

In view of the foregoing discussion, that branch of the University's motion, pursuant to CPLR 325, for removal of the instant action to the Civil Court is denied. The gravamen of the University's argument relied on a limit being placed on plaintiff's damages of $1,600.

Plaintiff also cross-moved for leave to renew and reargue the Prior Order. That branch of plaintiff's cross-motion for leave to reargue the Prior Order is denied as untimely. Although plaintiff timely served his cross motion, pursuant to CPLR 2215, it was not timely under the time limitations set by CPLR 2221. A motion for leave to reargue must be made within thirty days after service of a copy of the order determining the prior motion and written notice of its entry (CPLR 2221[d][3]). Since service of the Prior Order was made on plaintiff on January 29, 2001, plaintiff's cross-motion to reargued served on March 9, 2001 is untimely.

That branch of plaintiff's cross motion for renewal is also denied. Although the 30-day time limitation under CPLR 2221[d][3] does not apply to motions to renew, the new evidence relied on by plaintiff consists of affidavits and correspondence which plaintiff acknowledges that he had prior to the dismissal motion and failed to submit (*Foley v Roche*, *supra*). Additionally, plaintiff does not provide a reasonable excuse for not previously proffering this new evidence (*see*, *Pappas v Saatchi and Saatchi Co.*, 227 AD2d 109 [1st Dept], *lv dismissed* 88 NY2d 1016, *rearg denied* 89 NY2d 862 [1996]). Renewal is not a second chance freely given to parties who have not exercised due diligence in making their first factual presentation (*Rubinstein v Goldman*, *supra*).

Accordingly, it is

ORDERED that the branch of the motion of the Trustees of Columbia University in the City of New York to reargue this court's memorandum decision and order dated January 1, 2001, is granted, and upon reargument, plaintiff's request for punitive damages, as asserted in the fraud and

negligent misrepresentation claims in the proposed Amended Complaint, is dismissed; and it is further

ORDERED that the branch of the motion of the Trustees of Columbia University in the City of New York to renew this court's memorandum decision and order dated January 1, 2001 is denied; and it is further

ORDERED that the branch of the motion of the Trustees of Columbia University in the City of New York, pursuant to CPLR 325, for removal of the instant action to the Civil Court is denied; and it is further

ORDERED that the branch of the plaintiff's cross motion for leave to renew this court's memorandum decision and order dated January 1, 2001 is denied.

Dated: October 4, 2001

ENTER:

By /signature stamped/
MARILYN SHAFER J.S.C.
J. S. C.

APPENDIX 6

THE FACE OF THIS DOCUMENT CONTAINS A WATERMARK OF THE UNIVERSITY SEAL

COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK

NAME: Christopher F. Sheridan
SSN#: 134-62-3514
SCHOOL: SCHOOL OF GENERAL STUDIES UNDERGRADUATE

DEGREE(S) AWARDED: Bachelor of arts

DATE AWARDED: October 24, 1990

MAJOR: HISTORY

SUBJECT	COURSE	TITLE	POINTS	GRADE
		Autumn 1988		
English	F1102	College Composition II	3.00	B
Fine Arts	F1011	Introduction the Arts	3.00	A-
Philosophy	F1401	Elementary Logic	3.00	C
Spanish	F1201	Intermediate Spanish I	4.00	B+
			GPA	3.025

SUBJECT	COURSE	TITLE	POINTS	GRADE
		Spring 1989		
English	F1124	American Literature Study	3.00	A
History	BD3052	Constitutn – Historical Perspectv	3.00	D
History	W3648	History of the South	3.00	D
Music	F1001	Introduction to Music	3.00	C
Spanish	F1202	Intermediate Spanish II	4.00	B-
			GPA	2.167
		Autumn 1989		
English	F1125	World Literature Study	3.00	B-
History	BC3056	The Amer Civil Rights Movement	3.00	B
History	W3205	Europe Politics – Socity 1870-1919	3.00	B-
History	W3227	British History, 1688-1832	3.00	B+
History	W3855	The Medieval City	4.00	D
			GPA	2.438

SUBJECT	COURSE	TITLE	POINTS	GRADE
		Spring 1990		
History	W3228	British History, 1832-1988	3.00	B+
History	W3361	History of the Soviet Union	3.00	B-
History	W3892	The Crusades	4.00	B-
History	W3934	The Immigrant and the City	4.00	C+
Phys Ed	C1002	Physical Education Activities	1.00	P
			GPA	2.714

REMARKS

Cumulative GPA: 2.559

40.00 Credits Transferred from SUNY Maritime Coll
30.00 Credits Transferred from St John's University
4.00 Credits Transferred from Suffolk County Comm Coll Ammer

This official transcript was produced on MAY 20, 1996 and released to:

SFC BUTCH BINKHAM
NJNG
NORTH EVERGREEN AVE
WOODBURY, NJ 08096 USA

[ROUND] LEGAL SEAL

/s/ JOSEPH P. CAPOBLANCO
Joseph P. Capoblanco
University Registrar

APPENDIX 7

A.

REPLY BRIEF OF PLAINTIFF-APPELLANT/ CROSS-RESPONDENT ("SHERIDAN")

I.

COLUMBIA IS PROHIBITED FROM ENACTING BY-LAWS OR ORDINANCES IN VIOLATION OF ITS 1810 CHARTER

Columbia's reliance on Section IX of the *1810 Charter* is not only misplaced, but is inconsistent with the law of New York governing interpretation of charter powers and the permissible scope of by-laws, ordinances and regulations. Moreover, Columbia did not quote Section IX in its entirety, thereby omitting a crucial component of the section necessary for interpretation. The full language of Section IX states as follows:

> "IX *And be it further enacted*, that the said trustees, and their successors, shall have full power and authority to make all ordinances and bye-laws which to them shall seem expedient for carrying into effect the designs of their institution; *Provided always*, That such ordinances or bye-laws shall not make the religious tenets of any person a condition of admission to any privilege or office in the said college, *nor be inconsistent with the constitution and laws of this state, nor with the constitution and laws of the United States*." (emphasis added) Section IX, *1810 Charter*, *supra* at Footnote 2 of Sheridan's Appeal Brief.

Thus, when read as a whole, the by-law or ordinance 1) must be expedient for carrying out the designs of the institution and, 2) must not be inconsistent with the laws of New York State. Firstly, the revoking or restricting of a degree-holder's degree and privileges is not a power granted Columbia by the *1810 Charter* and therefore is clearly not a "design of the institution" and any by-law or ordinance that revokes or restricts a degree-holder's degree or privileges is invalid and not within the scope of Section IX. Secondly, as that part of Section IX omitted in Columbia's Response Brief clearly states: no by-law or ordinance can be inconsistent with the laws of New York State. Since the applicable law, Sections VII and VIII of the *1810 Charter*, unambiguously entitles the possessor of the degree to all privileges and immunities held by others with similar or identical degrees, and the withholding of transcripts revokes or restricts the degree and its privileges, any by-law or ordinance which has the effect of withholding transcripts of degree-holders is unlawful and in violation of Sections VII and VIII of the *1810 Charter*. Therefore, Columbia is in violation of Section IX of the *1810 Charter*, the very section Columbia relies on in an attempt to circumvent the express legislative mandate that grants the privileges and immunities entitlement to degree-holders.

APPENDIX 8

Plaintiff attempts to overcome *Spas v. Wharton*, 106 Misc. 2d 180; 431 N.Y.S.2d 638 (Sup. Ct. N.Y. Co. 1980) and *Sirohi v. The Trustees of Columbia University*, 1998 U.S. App. Lexis 22519 (2nd Cir. 1998) by claiming that each is "irrelevant". Both *Spas* and *Sirohi* are very much relevant to this case as *Spas*, cited with approval by this Court in *Gray* and by the Second Circuit in *Sirohi*, and *Sirohi* itself, endorse the mechanism of a university withholding transcripts and diplomas in order to insure the collection of outstanding tuition obligations.

Finally, plaintiff's characterization of *Spas* as "not even good law" is also mistaken as this Court only last year adopted *Spas* in its own decision in *Gray*, *supra*.

One final point is necessary. In addition to the reasons set forth in Columbia's Brief (pages 11-12), plaintiff's reliance on the 1810 Charter, *Laws of 1810*, Chap. 85, Webster's and Skinner's Law of the State of New York, 1812 Edition, is inappropriate because the provisions relied upon by plaintiff do not afford an individual a private right of action under which he may sue to obtain his relief. See generally, *Carrier v. Salvation Army*, 88 N.Y.2d 298 (1996). Furthermore, and to the extent plaintiff suggests that a supposed violation by Columbia of the *1810 Charter* is a violation of the Federal and State Constitutions, Columbia is a private university and not a "state actor" and therefore is not bound by the New York State and Federal Constitutions. See, *Odom v. Columbia University*, 906 F.Supp. 188, 195 (S.D.N.Y. 1995) ("Columbia, as a private institution, does not act under color of State law"); *Sirohi*, *supra*, ("defendants are not state actors").

"permanent academic records" of the college. Article 5, Section 219 of the *Education Law* states in paragraph 4, in part:

> "Whenever the charter or incorporation of an institution is revoked or an order of dissolution made pursuant to the provision of this section, *it shall be the duty of the trustees and/or the custodians of the permanent academic records of such institution to file the same with the state education department, or with such other agency as may be approved by said department where they shall be kept available for future reference . . .*" Id.

Thus, the New York State legislature recognizes that the permanent academic records (which would include official transcripts of graduates) are public documents that are held in trust by all universities and mandates that upon dissolution of a university or college, the trustees or custodians of the permanent academic records must file the same with the state education department. Moreover, the Court of Appeals has held that the dissolution of a private university chartered by the New York legislature must be dissolved by the Regents pursuant to Section 219 of the *Education Law*. See *St. Lawrence University*, *supra*, 282 N.Y.S.2d at p. 748. Consequently, Columbia's "permanent academic records" are, like all such college records in New York, documents that Columbia does not "own" but holds in trust for both the State of New York and the degree holder. Clearly, each graduate's official transcripts evidencing courses completed and the degree conferred are "permanent academic records" as described in Section 219 of the *Education Law*.